

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRUSTEES OF THE NATIONAL RETIREMENT
FUND,

Plaintiffs,

-against-

PAT & ROSE DRESS, INC.,

Defendant.

COMPLAINT

Plaintiffs, by their attorney Jennifer Oh, Esq., complaining of Defendant Pat & Rose Dress, Inc., respectfully allege as follows:

NATURE OF ACTION

1. This is an action by plan fiduciaries to enforce the provisions of a collective bargaining agreement and certain statutory obligations imposed upon Defendant by Section 515 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §1145.

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to Section 301(a) of the Labor Management Relations Act of 1947, as amended (“LMRA”), 29 U.S.C. §185(a) and Sections 502(a), (e) and (f) of ERISA, 29 U.S.C. §1132(a), (e) and (f).

VENUE

3. Venue is properly laid in this Court pursuant to Section 301(a) of the LMRA, 29 U.S.C. §185(a); Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2); and 28 U.S.C. §1331(b).

THE PARTIES

4. Plaintiff National Retirement Fund (“Retirement Fund”) is established and maintains a plan (the “Plan”) to provide retirement income to employees for whom contributions are made by employers. As such, it is an “employee pension benefit plan” as defined in Section 3(2) of ERISA, 29 U.S.C. §1002(2). The Plan is maintained pursuant to one or more collective bargaining agreements between employee organizations and various employers, which require such employers to contribute to the Retirement Fund. As such, the Retirement Fund is a “multiemployer plan,” within the meaning of Section 3(37)(A) of ERISA, 29 U.S.C. §1002(37)(A).

5. The Retirement Fund is administered by a Board of Trustees composed of an equal number of employer and employee representatives, as required by Section 302(c)(5) of the LMRA, 29 U.S.C. §186(c)(5). The Board of Trustees is the “plan sponsor” with respect to the Plan pursuant to Section 3(16)(B)(iii) of ERISA, 29 U.S.C. §1002(16)(B)(iii).

6. Plaintiff Trustees of the Retirement Fund exercise discretionary authority, control and responsibility with respect to management and administration of the Retirement Fund and Plan and disposition of Retirement Fund assets. As such, Plaintiff Trustees of the Retirement Fund are fiduciaries with respect to the Plan, within the meaning of Section 502(a)(3) of ERISA, 29 U.S.C. §1132(a)(3), as defined in Section 3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A). The Retirement Fund maintains its principal administrative offices at 333 Westchester Avenue, North Building, White Plains, New York 10604, which is within the Southern District of New York.

7. Upon information and belief, Defendant Pat & Rose Dress, Inc. is a New York corporation having or having had its principal place of business at 327 W. 36th Street, Room 3a, New York, New York 10018.

8. New York Metropolitan Area Joint Board, Workers United, and their affiliated locals, the New York Coat, Suit, Dress, Rainwear and Allied Workers' Union, Local 89-22-1, Workers United and the Amalgamated Ladies' Garment Cutters' Union, Local 10, Workers United (collectively, the "Union") is an unincorporated "employee organization" as defined in Section 3(4) of ERISA, 29 U.S.C. §1002(4). Upon information and belief, the Union and Defendant have been parties to a collective bargaining agreement ("Bargaining Agreement") covering all relevant periods herein. Upon information and belief, pursuant to said Bargaining Agreement, employee benefit fund contributions to Plaintiff Retirement Fund were and are due to be paid by Defendant.

**AS AND FOR A FIRST CLAIM FOR RELIEF BY PLAINTIFF
TRUSTEES OF THE RETIREMENT FUND AGAINST DEFENDANT**

9. Plaintiff Trustees of the Retirement Fund repeat and reallege each and every allegation contained in paragraphs "1" through "8" of this Complaint with the same force and effect as if set forth at length herein.

10. Upon information and belief, contributions to the Retirement Fund from Defendant as required by the Bargaining Agreement for the months of October 2018 through and including February 2019 in the principal amount of \$8,114.86 have not been made and are now due and owing. By reason thereof, Defendant is liable to Plaintiff Retirement Fund in the principal amount of \$8,114.86 for the period stated.

11. Plaintiff Retirement Fund is entitled to collect interest on the outstanding delinquent contributions from Defendant calculated pursuant to Section 502(g)(2)(B) of ERISA, 29 U.S.C. §1132(g)(2)(B).

12. Plaintiff Retirement Fund is entitled to collect liquidated damages, attorneys' fees and costs from Defendant pursuant to Sections 502(g)(2)(C) and 502(g)(2)(D) of ERISA, 29

U.S.C. §1132(g)(2)(C) and 29 U.S.C. §1132(g)(2)(D).

WHEREFORE, Plaintiffs respectfully pray for an order and judgment:

- a. Directing Defendant to pay to the Retirement Fund the principal amount of \$8,114.86; and
- b. Directing Defendant to pay to the Retirement Fund interest on the sum set forth in paragraph “(a)” herein, to be computed at an interest rate as prescribed by the Retirement Fund, pursuant to Section 502(g)(2)(B) of ERISA, 29 U.S.C. §1132(g)(2)(B); and
- c. Directing Defendant to pay to the Retirement Fund liquidated damages, to be computed at a rate as prescribed by the Retirement Fund, pursuant to Section 502(g)(2)(C) of ERISA, 29 U.S.C. §1132(g)(2)(C); and
- d. Directing Defendant to pay to the Retirement Fund the reasonable attorneys’ fees and costs of the action, pursuant to Section 502(g)(2)(D) of ERISA, 29 U.S.C. §1132(g)(2)(D); and
- e. Granting such other legal and equitable relief as the Court deems appropriate.

Dated: October 4, 2019
White Plains, New York

**TRUSTEES OF THE NATIONAL
RETIREMENT FUND, Plaintiffs**

By:



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